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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

[REDACTED]

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 24, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on August 21, 2015, at Alma, Wisconsin. A hearing for July 24, 2015, was rescheduled at the petitioner's request.

The issue for determination is whether the petitioner is entitled to speech and language therapy.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]

Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner is a resident of Buffalo County.

- [REDACTED]
2. The petitioner is a six-years-old girl diagnosed with cerebral palsy and an expressive language disorder. Her vocabulary consists of less than 10 intelligible words.
  3. The petitioner receives speech and language therapy through her school district during the regular school year but not during the summer months.
  4. The petitioner with [REDACTED] requests reimbursement for a speech evaluation and 12 weekly 45-minute speech and language therapy sessions over the summer of 2015. It seeks \$648 for the evaluation and \$8,067.60 for the therapy. She did not receive this therapy.

### DISCUSSION

Medical assistance covers speech therapy, but recipients must obtain prior authorization after the first 35 visits. Wis. Admin. Code § DHS 107.18(2)(b). The petitioner is a six-year-old girl diagnosed with cerebral palsy who speaks less than 10 words. She seeks 12 weekly 45-minute speech and language therapy sessions over the summer of 2015 from [REDACTED] at a cost of \$8,067.60. ([REDACTED] also seeks \$648 for an evaluation.) The therapy is meant to increase the number of words she can speak and allow her to use an augmented communication device. The Office of Inspector General denied the request because it contends that [REDACTED] has not coordinated therapy with the petitioner's school therapist, the requested therapy duplicates therapy she receives at school, and a variety of related arguments.

When determining whether a service is necessary, the Division must review, among other things, the medical necessity, appropriateness, and cost of the service. Wis. Admin. Code, § DHS 107.02(3)(e). "Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
  1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
  2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
  3. Is appropriate with regard to generally accepted standards of medical practice;
  4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
  5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
  6. Is not duplicative with respect to other services being provided to the recipient;
  7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
  8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
  9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, § DHS 101.03(96m).

[REDACTED] therapist did coordinate with the school therapist on April 24, 2015, May 4, 2015, May 11, 2015, and May 19, 2015. And I do not agree that the requested services duplicate those the petitioner receives through her school district. As noted, the requested therapy is for the summer of 2015, but the petitioner's school district does not provide therapy in the summer time. The Office of Inspector General points out that the school district has a legal obligation to provide all services the petitioner requires. This is true, but many smaller districts such as Mondovi where the petitioner attends school simply do not

provide any therapy in the summer, and this decision has nothing to do with the specific needs of its students. The school district may have a legal obligation to provide therapy to the petitioner, but it is a legal obligation I have no authority to enforce. What I do have authority to determine is whether the private and public services duplicate each other. Private therapy cannot duplicate therapy that does not exist, so when a person seeks private therapy for a 12-week period in which she receives no school therapy, there can be no duplication.

But this does not mean the petitioner is entitled to the therapy. The Division of Hearings and Appeals' decisions must have some substantive outcome. The Division has no equitable powers that would allow it to consider the fairness of the situation, and it cannot issue advisory opinions. [REDACTED] entire argument was premised upon the fact that the petitioner was seeking therapy for a period in which she was not receiving school therapy. That period has passed, and she has returned to school. She did not actually receive this therapy during the summer of 2015. That means that any decision approving her request would have no effect. Although the division sometimes overturns a decision and then modifies the request to cover from that point forward rather than the period request, the next time the petitioner's circumstances will resemble those in her current request will be next summer. By then, her condition may change, meaning that she will have to submit a new request with updated information. This means that any decision concerning what may happen if she appeals next summer will be merely advisory. I am aware that this decision appears to be unfair because it could encourage the Office of Inspector General to delay its determinations of requests, but I have no authority to consider that factor.

In addition, even if I considered whether she should get therapy from this point forward, I would have to consider its cost-effectiveness. [REDACTED]'s seeks \$8,067.60 for 12 45-minute sessions, or nearly \$900 an hour. I am aware that if the request were approved this amount might be modified, but I must judge a request on the information before me. The evidence before me is that the services would cost too much to be cost-effective. I have pointed this problem out to [REDACTED]'s at last once before, apparently to no avail. *See DHA Decision No. MPA/156405.*

### **CONCLUSIONS OF LAW**

The petitioner is not entitled to the requested services because the matter is moot.

**THEREFORE, it is**

**ORDERED**

The petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## APPEAL TO COURT

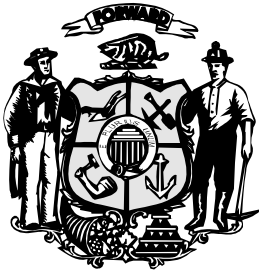
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 17th day of September, 2015

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\sMichael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals



## State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 17, 2015.

Division of Health Care Access and Accountability